

## 2014 STATE OF THE JUDICIARY ADDRESS



Honorable Matthew B. Durrant Chief Justice, Utah Supreme Court January 27, 2014 Thank you Speaker Lockhart/President Niederhauser for the invitation to join you today to report on the state of Utah's judiciary.

I have with me today Associate Chief Justice Ronald Nehring, Justice Jill Parrish, and Justice Tom Lee. Justice Christine Durham regrets that she cannot be here. I count it a great privilege to serve with such extraordinary jurists. We are joined by our superb court administrator, Dan Becker.

I'd like to begin with a personal story. It concerns the 1984 NBA draft, possibly the greatest draft in NBA history. It included future all-time NBA greats Hakeem Olajuwan, Charles Barkely, and none other than Michael Jordan. And my brother-Devin Durrant. At that time, Dave Checketts was the president and general manager of the Utah Jazz, who had the number 16 pick. As it happened, Dave was a friend of mine from my days in Cambridge, Massachusetts, and he told me that the Jazz were very interested in Devin. And as draft day approached, it looked more and more like the Jazz would pick Devin.

My family and I were of course thrilled at the prospect that Devin would be playing in Utah. But the day before the draft, Dave called and told me that he had some bad news. Very apologetically, he said the Jazz had decided to go another direction. I was devastated and asked him who the Jazz's pick would be. He replied, "A guard out of Gonzaga named John Stockton." I was shocked. This Stockton guy was a nobody. With great emotion, I made this solemn pronouncement: "Dave," I said, "You're making a huge mistake." I tell this story so that you might know that you can have complete confidence in my judgement as Chief Justice . . . or at least perhaps some confidence as to non-basketball matters, such as the ones I'll be discussing here today.

And the first matter I'd like to discuss is a number -93.

That's the percentage of people who reported that they agreed with the following statement:

I am satisfied with my experience at court today.

That question was one of 20 included in a survey conducted of litigants, lawyers, witnesses, and others as they concluded their business in courthouses across the state last summer. The survey is administered every other year in an effort to provide feedback to the courts on how we are perceived by those we serve.

Keep in mind that a court decision often results in both a winner and a loser, so for 93% of those respondents to say they were satisfied with their experience is remarkable. The most likely explanation for this number is that they must have based their responses on something other than whether they won or lost.

Their responses to other questions might help explain this high level of satisfaction:

I understood what happened in my case	-	93%
I know what I should do next in my case	-	93%
The judge, commissioner, referee, or mediator listened to all sides	_	92%
I finished my business in a reasonable time	-	89%
The hearing was fair	-	90%
Both sides at the hearing were treated the same	-	89%

And one question that I think is particularly important:

I was treated with courtesy and respect - 96%

When people truly believe that they have been treated with respect, they in turn respect the process, regardless of the result. This correlation is one that has been studied closely in the past few years. The term used to describe it is *procedural fairness*.

The elements of procedural fairness are voice, neutrality, and respect. Voice means the ability of court participants to express their viewpoints. In others words, the judge asks for input and actively listens. Neutrality means just that - consistently applied legal principles, unbiased decision makers, and a "transparency" in how decisions are made. Lastly, respect, meaning individuals are treated with dignity and their rights are affirmatively protected. It means that judges not only protect the rights of litigants, but explain that is what they are doing. It makes a difference.

When there is procedural fairness, people believe they have an opportunity to speak and are listened to (their voice is heard), they feel they are treated with respect, and they

understand what is happening, and why. The judge focuses on them individually, rather than on getting through the court calendar. With heavy dockets, this is no small accomplishment. But we have taken the research in this area to heart. We have educated our judges and helped them hone these skills.

93%. That is a number of which I am extremely proud. It's a number that our judges and staff are proud of, and it's one you should be proud of as well.

Of course, I'm not so naïve as to think that everyone who comes to court feels this way. Indeed, the numbers that I have just shared are state-wide figures. When you examine the results courthouse to courthouse, there are various issues in particular locations that we need to address. But that's why we conduct this survey, to check-in with our court users to see what they see and to hear what they hear, so that we can identify the weak points we need to shore up.

My guess is that from time to time, you hear from constituents who have an unfavorable opinion of their court experience. 93% is not 100% and I would be surprised if you haven't had some who have sought you out to complain about a decision, a procedure, or a rule. That's the nature of the legislative process. But their perspectives are not representative of the experience of the vast majority of court participants.

To provide some context for the concerns you might hear, last year our courts, at all levels, handled just under 900,000 cases. Think about the types of issues you've directed our courts to handle, the issues our judges and staff are called upon to deal with in these 900,000 cases. They involve commerce, property, families, crime, juveniles, highway safety, drugs, mental health, homelessness; you name it. Our society's most complex, emotional, and difficult problems and disputes make their way to our courts, and our job is to provide a just and fair resolution.

Among the most emotional cases are divorces, where years of emotional and financial entanglements have to be unraveled, and the expenses of one household have to be spread across two. If children are involved, judges have to decide how to keep them a part of both parents' lives for years to come. And parents are rarely on their best behavior during a divorce.

Child welfare matters are, unfortunately, brought to us far too often. Our judges are asked to find the truth when there are allegations of child abuse, and when abuse is found, we face the enormously difficult task of balancing the future safety of vulnerable children with their parents' fundamental right to continue to parent them. These decisions have to

be made expeditiously, so that children don't languish in foster care, but also judiciously, because a wrong decision can result in harm to or even the death of a child.

Our most serious crimes require a careful judicial balance as well, where the constitutional rights of defendants, presumed innocent, come up against the rights of victims, and society's collective interest in safety. Sometimes these cases also require the most serious decision one human being can make about another, the decision to order that a person be put to death.

Civil cases don't reach us unless other ways of resolving disputes have failed. Property disputes fill our dockets. Decisions about our natural resources, energy, air quality, scams that target our elderly, and, yes, ethics and elections issues are all brought to us for fair resolution. We do not go looking for any of these issues. Each is brought to us, and our role is defined by our constitutions and laws.

This business of resolving disputes isn't easy work, but it's important work—important to the individuals involved, important to our community, and important to our society. I assure you, we take our work, our oaths, seriously, and I believe we do our work in a way in which the public should, and does, have confidence.

One measure of public opinion is reflected in the courthouse survey results I shared a few moments ago, and those results are consistent with the strong public confidence in our courts found by the broader independent public opinion poll I shared with you last year. In short, when we have asked our constituents how we are doing, they have said "very well, thank you." My view is that they have confidence in our branch of government because in recent years we have strived to be responsive and have adhered to certain core principles, three of which I would like to explain further: accessibility, efficiency, and transparency.

## Accessibility

This is where our greatest challenges lie: increasing numbers of Utahns can't afford the cost of legal assistance; increasing numbers of litigants choose to represent themselves; increasing minority populations are coming to our courts, some of whom distrust our governmental institutions, others who don't speak English well enough to understand what is happening in a court proceeding; and, for all of our court users, the cost in time and travel to conduct business at a courthouse can be significant.

This is also where we are seeing tremendous progress, although the amount of work that remains is daunting. Last year I reported to you on the nascent success of our statewide

implementation of the courts' Self-Help Center. This center is our phone, email, and text-based resource of procedural help for any who contact us. Our staff of specially trained lawyers helped 16,000 people last year. They helped with everything from directions to courthouses to information about how to obtain a domestic violence protective order.

The Self-Help Center staff also frequently direct callers to resources on our website. We have developed increasingly comprehensive and sophisticated forms, both static and interactive, that allow litigants to represent themselves more competently. As an example, our online guardianship and conservatorship resources are very specific. Our guardianship self-help resources include everything from a manual on the responsibilities of guardians to a true-false test for prospective guardians to take so that they may demonstrate their understanding of their statutory responsibilities.

Our Online Court Assistance Program, or OCAP, has been retooled to be even more user-friendly, and now is available to prepare fully fileable documents for divorces, parentage cases, enforcement of domestic orders, garnishment, landlord-tenant cases, guardianships and conservatorships, protective orders, and stalking orders. Last year over 60,000 documents were generated using this tool.

There are, of course, situations when self-help resources aren't enough, when only a lawyer will do, and the State Bar has stepped up with two important programs. The first is the Pro Bono program, in which lawyers accept cases without any compensation, and the second is the recently developed Modest Means program, in which litigants pay on a sliding fee schedule, based on their ability to pay. Both of these efforts require willing lawyers, as well as coordination to get the willing lawyers together with clients in need. The Bar is providing both, and they deserve our thanks for making legal representation more accessible.

Utah's increasing ethnic diversity also presents access challenges. All court users have a right to understand their court proceedings, and to that end we provided translators for 47 languages in our courts last year, and they provided almost 20,000 hours of translation. The logistics of this coordination of translators, litigants, facilities, judges, and lawyers is the responsibility of our court staff, and they too have done a remarkable job. We have even adopted technology that allows us to use interpreters in Salt Lake to interpret real-time court sessions in the Uintah Basin, for example, saving taxpayers money and litigants time.

The Judicial Council is also currently studying how best to reduce the time and cost associated with attending some types of proceedings in rural parts of our state. For example, it's now technologically possible for a judge located in Logan to conduct a

hearing involving people who are in a courtroom in Kanab, providing convenience for the parties and their counsel, while making better use of the judge's time and substantially reducing travel cost for the litigants and their lawyers. Our committee is sorting out what types of cases lend themselves to these types of remote hearings and what rules or procedures need to be tweaked to facilitate this kind of accessibility. The challenge is to find opportunities for efficiency, without sacrificing the local character and autonomy of our rural communities. We should have more to report to you in this regard next year.

With each of these initiatives, our objective is to not only operate more efficiently, but to actually improve access by reducing costs and improving convenience for those in our state who need the service of their courts. In other words, accessibility.

## **Efficiency**

Our courts are leading the way in efficiency. We've been informed by the National Center for State Courts, the sister organization to your National Conference of State Legislatures, that Utah's state courts have the most comprehensive and advanced electronic court record system in the country. No other state has the same statewide implementation of e-filing, e-payments, and e-warrants, combined with real-time, on-line access to not just dockets, but documents and data. The public is well served by the innovations we have promoted and you have supported.

The remarkable progress we have made in implementing the electronic record has also had its intended effect on the nature and quantity of work we ask our court clerks to do. Their jobs have become more about data quality than data entry. And because the data quality work is electronic, their efficiency is higher, and now fewer people can process more casework. This has allowed us to reduce our court clerk workforce by 8% over these last two years of electronic record implementation, which of course reduces our personnel costs. This is in large measure why our budget requests last year and this year have been so limited.

These efficiencies affect not only our staff and your budgeting, but the public as well. Case documents are available on-line, which allows for fewer trips to the courthouse for lawyers, the general public, and yes, the media. Anyone with access to a computer can, without venturing to a courthouse, check for scheduled hearings, make a payment, or review a document. The electronic record allows us to move work to where staff is available, or a court hearing to where a judge is available, and the benefits are substantial.

Moving to an electronic record also means we have lower costs for postage, paper, file folders, and storage equipment. Five years ago we spent \$150,000 on file folders alone.

This year, \$0. Also, our paper costs have been reduced by \$210,000. And with no paper files, another substantial benefit is becoming increasingly apparent - freed up space, previously devoted to records storage.

A very concrete example of this is our experience just this winter in Summit County. Increases in caseloads in this county have required that we begin the process of adding a courtroom to our existing Summit County facility. Normally, we would have come to you for assistance in building and funding a new courtroom. But as we walked through the existing building, it became apparent that there was space that was becoming available - our file storage rooms. Moving to an electronic record has made available sufficient space to allow us to do a much simpler remodel and add a much needed courtroom within the walls of the existing courthouse.

The ability to recover space within other existing courthouses and put that space to new uses should prove to be a money saver in other parts of the state as well, adding to the list of efficiencies gained by our e-everything approach.

## **Transparency**

I believe our court system is as transparent, if not more so, than any other part of government. When I say this it sounds boastful, and maybe it is, but let me explain: We have extensive, relevant performance measures, not just at the state level, but right down to the individual courthouse, and this data is available to the public on our website. Public opinion polls and court user surveys have become a part of our routine process of self-evaluation, and a part of what we report to you and to our communities. Published time standards provide guidance for our courts and delimit expectations for the public.

Further, the business of the court is done in open courtrooms, where the public is encouraged to attend. Since April 1st of last year, the media has been permitted to use video cameras in court to cover proceedings. Since that date, trials and hearings in over 100 cases in the district, juvenile, and justice courts have been videotaped by the media. And, in one instance, an entire two week trial was beamed across the world via a real-time broadcast. It is our hope that by allowing cameras into the courtroom we will bring the work of our courts closer to the public and that the trust and confidence of the public in the fairness and effectiveness of Utah's courts will continue to increase.

In one of the most visible ways in which our courts are transparent, each individual judge has his or her performance as a judge assessed by an independent body, the Judicial Performance Evaluation Commission. The extensive work of that commission is then published and promoted to the public for their use in individual retention elections. This,

to my knowledge, is the most formal, involved, detailed, and transparent evaluation procedure of any public servant, at any level of government.

Now, if I may address one last issue. Our Judicial Council has repeatedly proven its ability to wrestle difficult issues to the ground and advance meaningful change and, on any number of occasions, has brought to this body well thought out recommendations for you to consider. If you have issues or ideas relating to our courts, bring them to the Judicial Council. Work with us on identifying what further improvements are possible.

We are proud of the success of our new business model and of our ability to use existing resources to provide increased access, efficiency, and transparency in everything we do. We are also proud that we have not asked and are not asking you to restore funding cuts of the past few years. But most of all, we are proud of our extraordinary judges and staff.

Are there things that we could further improve upon? Of course. What part of government couldn't be improved upon? But even John Stockton didn't shoot 93% from the free throw line. And that was with nobody guarding him. I'm confident my brother Devin would have done better. But it's probably time I get past that.

So the final numbers read:

John Stockton-83%

Utah Courts-93%

As always, thank you for your gracious attention, thank you for the work you do on behalf of all Utahns, and I wish you a productive session.

The mission of the Utah State Courts is to provide an open, fair, efficient, and independent system for the advancement of justice under the law.



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